91-234

No.:

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

IRENE S. ATRAQCHI and MIKE R. ATRAQCHI,

PETITIONERS

v.

UNKNOWN NAMED AGENTS OF THE
FEDERAL BUREAU OF INVESTIGATION, ET AL.

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Irene S. Atraqchi
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Pro se

QUESTIONS PRESENTED

1. Whether Statute 18 U.S.C.A. 2520 should have been invoked and the plaintiffs given the opportunity to prove their case since the complaint alleged excessive illegal wiretapping; electronical surveillance; dissemination of said information gained falsely, maliciously, and wantonly to the General Public; and caused loss of job in violation of their 4th Amendment right to the U.S. Constitution.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

IRENE S. ATRAQCHI and MIKE R. ATRAQCHI

PETITIONERS

v.

UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, VERN KLINGMAN, LEONARD DAHL, MUMTAZ FARGO, HAROLD HANSER, MIKE SCHAFER, FIRST UNITED METHODIST CHURCH, PRINCIPAL FINANCIAL GROUP, FIREMAN'S FUND INSURANCE CO., MOUNTAIN BELL TELEPHONE CO., JANE DOE, and JOHN DOE (1 thru 1000)

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TO: THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, Irene S. Atraqchi and Mike R. Atraqchi, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals For The Eighth Circuit entered on June 26, 1991.

OPINION BELOW

On June 26, 1991, the United States Court of Appeals For The Eighth Circuit entered its memorandum affirming the District Court's judgment dismissing plaintiffs' notice pleading complaint for failure to state a claim upon which relief can be granted under F.R.C.P. Rule 12 (b) (6) and dismissed the case

on all defendants. A copy of the memorandum, which is not to be published, is attached hereto as Appendix A, and a copy of the judgment of the District Court is attached hereto as Appendix B.

JURISDICTION

On June 26, 1991, the United States Court of Appeals For The Eighth Circuit entered judgment affirming the District Court's decision in dismissing the petitioners' civil action seeking declaratory judgment and injunctive relief under Statute 18 U.S.C.A. 2520 against Unknown Named Agents of The Federal Bureau of Investigation et al. for illegal wiretapping and electronical surveillances of the petitioners' telephones, cars, and home and dissemination of said information gained; falsely, maliciously,

and wantonly to the "General Public" in violation of their 4th Amendment right.

B. Jurisdiction of this Court is invoked under Title 28, United States Code 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure."

Statute 18 U.S.C.A. 2520:

> "Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications."

STATEMENT OF THE CASE

Jurisdiction of the District Court is invoked under 28 USCA 1343 (3) (4); USCA Const. Amend 4; 28 USCS 1331; 42 USC 1983; and 42 USC 1985 (1) (2) (3) (4). The jurisdiction of the District Court is further invoked pursuant to 18 USCA 2520.

The Petitioners are informed and believe, and alleged in their complaint that Unknown Named Agents of the Federal Bureau of Investigation in the City of Minneapolis, Minnesota illegally wiretapped all their telephone conversations and bugged their car without warrant, probable cause, or consent.

The seized conversations and the information gained were disseminated falsely, maliciously, and wantonly

into a field of interception whereby heard by the "General Public." The field of interception was instituted and financed by the First United Methodist Church for the purpose of converting the Atraqchis, their families, and others.

Through this field of interception: the Petitioners have been located throughout the State of Minnesota, all of their conversations have been seized, and they were prevented from obtaining any employment for the last seventeen months until the present.

On February 23, 1990 at approximately 9:15 PM at Coffman Memorial Student Union, University of Minnesota Campus, Minneapolis, Mn., the Petitioners were confronted by Charles Waring (a person unknown to them and not

a party to this suit at this time). Waring informed them that they cannot obtain any employment in the State of Minnesota, that he and others will see to it that no employer will ever hire them and instructed them to go back to the State of Montana. Earlier that day, Petitioner, had inquired by telephone about securing employment from the telephone booths on the ground floor of Coffman Memorial Student Center. These conversations were seized and relayed back to Petitioners by Waring.

Again, while the Petitioners were guests at the Thunderbird Hotel, Bloomington, Mn., on February 6, 1990 their conversations in that room were seized through the telephone equipment and were relayed to them the next morning at break-

fast by two individuals whom were unknown to them. They informed the Petitioners that nobody will employ them in the State of Minnesota, and it is better for them to return to the State of Montana.

The Petitioners moved from the State of Montana to the State of Minnesota on February 18, 1990 after a death threat was made upon them by defendant, Fargo, in Billings, Montana if they did not consent to the illegal wiretapping of their telephone and the electronical surveillance of their car and home and be converted.

The Petitioners litigated a similar matter of illegal wiretapping in the Federal Court in the State of Montana, Billings Division. The complaint was dismissed for failure to state a

claim under 12 (b) (6) and was affirmed by the U.S. Court of Appeals for the Ninth Circuit, 791 F.2d 167 (1986), cert denied, 107 S. Ct. 276 (1986).

Due to severe harassment Petitioners seeked and were granted asylum in Sweden on February 27, 1987 only to be forced back by the Unknown Named Agents of the Federal Bureau of Investigation.

In August, 1987 the Petitioners moved to vacate judgment for newly discovered evidence in the U.S. District Court, District of Montana for fraud, incarceration and murder of two witnesses on or about July, 1986 by defendants Unknown Named F.B.I. Agents, Dahl, Fargo, and Klingman to prevent them from testifying about the rape of the Petitioners' two

daughters. The motion was denied as untimely and was affirmed by the Ninth Circuit, 878 F.2d 1438 (1989).

Defendants: First United Methodist Church, Unknown Named F.B.I. Agents, Dahl, Fargo, and Klingman instituted another field of interception in Baghdad, Iraq in additional to the one in the Minneapolis- St Paul area and Billings, Montana by procuring about 2000 participants. Petitioners were made the center of activities for the purpose of gaining membership from the Moslem population.

Petitioner, Mike R. Atraqchi, is a naturalized citizen from Iraq. He has resided in the United States since 1958.

Defendants Unknown Named Agents of the F.B.I. together with Fargo, Dahl,

and Klingman have homosexualized, blackmailed, raped, and prostituted Petitioners' two daughters and forced them to say into the field of interception that the Petitioner, their father, has incested them. Shortly, afterward, the Petitioner lost his job with all Insurance Companies that he represented for the last seven years.

The Petitioners have sustained grave injuries and are in imminent danger of sustaining more injuries due to the excessive illegal wiretapping and electronical surveillance:

They are alienated from their families, friends, and associates; deprived of job and living in their home; prevented from obtaining a job in Minnesota; deprived of operating property; in imminent danger of losing their home and

their real estate properties for taxes; and they are under constant harassment and threat of entrapment.

Petitioners argued in their brief to the Court of Appeals for the Eighth Circuit that Statute 18 U.S.C.A. 2520 should have been invoked and that the Petitioners should have been given the opportunity to prove their case by discovery pursuant to F.R.C.P. Rule 34 to produce documents that are in possession of the defendants.

The Eighth Circuit Court of Appeals as well as the U.S. Attorney's brief did not discuss Statute 18 U.S.C.A. 2520 which was the basis for Petitioners' claim. The Petitioners alleged illegal wiretapping and substantial violation of constitutional rights.

REASONS FOR GRANTING THE WRIT

STATUTE 18 U.S.C.A. 2520 SHOULD HAVE BEEN INVOKED SINCE THE COMPLAINT ALLEGES EXCESSIVE ILLEGAL WIRETAPPING; ELECTRONICAL SURVEILLANCE; DISSEMINATION OF INFORMATION GAINED FALSELY, MALICIOUSLY, AND WANTONLY TO THE "GENERAL PUBLIC"; RAPE; MURDER; DEPRIVATION OF FAMILY, JOB, HOME, AND OPERATING THEIR PROPERTY; AND ARE IN IMMINENT DANGER OF LOSING THEIR PROPERTY FOR TAXES.

Certiorari should be granted for two reasons: This Petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and the Opinion below conflicts, by implication with previous decisions of this Court and with the decisions of other Circuits.

This Court has implicitly held that warrantless interception and dis-

closure of wire and oral communications are "unconstitutional" and that dissemination or use of said communication will state cause of action to the "aggrieved person" under 18 U.S.C.A. 2520 and the Fourth Amendment for recovery of civil damages as in Gelbard v. United States 408 U.S. at 45, 92 S. Ct. at 2360 (1972) and United States v. United States District Court 407 U.S. 297, 92 S. Ct. 2125 (1972). This Court stated:

> "unauthorized interceptions are crimes, 18 U.S.C. 2511 (1), and the victims of such interception, disclosure, or use are entitled to recover civil damages, 18 U.S.C. 2520." Gelbard v. United States

This Court further stated in United States v. United States District Court:

> "even in national security matters, warrantless surveillance is unconstitutional."

Both holdings of the U.S. Supreme

Court explicitly state that a compliance with the procedures, regulations, and remedies of 18 U.S.C.A. 2510-2520 is essential to protect the right of privacy (search and seizure under the Fourth Amendment to the U.S. Constitution).

The U.S. Court of Appeals for the Eighth Circuit has in its decision so far departed from the usual course of judical proceedings of Gelbard and United States and is contrary to the procedures and remedies of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C.S. 2510-2520). The Eighth Circuit did not discuss the Statute 18 U.S.C.A. 2520 which was the statutory basis for the Petitioners notice pleading complaint!

The Eighth Circuit is also in con-

flict with the Fifth Circuit in the case of Rev. Wright v. Florida 495 F.2d 1086 (1974); and with the D.C. Circuit in the case of Sinclair v. Kleindienst 711 F. 2d 291 (1983).

The above cases are similar on the point to Petitioners' case on the same matter of illegal wiretapping and electronical surveillance which alleged violation of constitutional and statutory rights. Statute 18 U.S.C.A. 2520 is the basis upon which these cases were filed.

In Wright v. Florida the Fifth Circuit remanded the matter and held that the District Court had jurisdiction to hear plaintiff's claims based on Statute 18 U.S.C.A. 2520 authorizing civil action by any person whose wire or oral communication is illegally intercepted, disclosed, or used.

In Sinclair v. Kleindienst, the Court of Appeals, District of Columbia Circuit, reversed, ordering that plaintiffs be allowed to amend complaint. The Court of Appeals held that general allegations of amended complaint were sufficient to state cause of action under statute 18 U.S.C.A. 2520.

It is further stated in Abramson v. Mitchell 459 F.2d 955 (8th Cir. 1972) in a similar case on the point that Mr. Justice Clark, retired, sitting by special designation held:

> "where plaintiffs claimed violation of their Fourth Amendment rights by defendants' interception of telephone and other conversations without probable cause, that Omnibus Crime Act is unconstitutional and if not, that defendants' tapped plaintiffs' lines without complying with provisions of Act, and defendants moved to dismiss complaint, court should not have granted motion and should have ordered hearing at which

application for wiretap, order and such other relevant evidence could have been produced and decision reached in accordance with Title III and the Fourth Amendment."

It is very clear that this case should not have been dismissed in the first instance for failure to state a claim, but the plaintiffs should have been allowed the opportunity to prove their case by production of documents that are in the possession of the defendants under F.R.C.P. Rule 34.

Furthermore, a notice pleading complaint should withstand a motion to dismiss for failure to state a claim. F.R.C.P. Rule 12 (b) (6), 28 U.S.C.A. Sinclair v. Kleindienst

Certain Courts have gone out of their way to instruct potential 18 U.S.C.A. 2520 litigants in the purpose

of the Statute as a specific remedy of civil damages to victims of unlawful wiretapping as in U.S. v. LaGorga 336 F. Supp. at 197 (W.D. Pa. 1971).

If the Eighth Circuit Court of Appeals' Opinion is left to stand, it will render the Omnibus Crime Act and Safe Streets Act unconstitutional and will create a great Constitutional crisis.

The Congress of the United States of America in enacting Title III created 18 U.S.C.A. 2520 for a safeguard and regulatory method to supervise and control the acts of governmental agencies and agents from abusing their authority. Statute 18 U.S.C.A. 2520 is the only remedy available for victims of illegal wiretapping and electronical surveillance to remedy their grievances and should be

invoked. U.S. v. Cardall 773 F.2d at 1129, 1134 (10th Circ. 1985). All that is required to invoke 18 U.S.C.A. 2520 is to allege illegal wiretapping, electronical surveillance, and deprivation of rights under the Constitution. Abramson v. Mitchell 459 F.2d 955 (1972).

This Court should take the opportunity to clarify its holdings in Gelbard and United States to reaffirm the availibility of Statute 18 U.S.C.A. 2520 as the only remedy available to victims of illegal wiretapping and to grant certiorari here to explicitly rule that the Petitioners' right be asserted by invoking Statute 18 U.S.C.A. 2520 as the Statute was intended and to give them the relief they sought in accordance with the Fourth Amendment and the rigid requirements of Title III, Omnibus Control and Safe Streets Act of 1968.

CONCLUSION

To deny to invoke 18 U.S.C.A. 2520 to remedy the Petitioners' illegal wire-tapping and electronical surveillance action, will render Title III, Omnibus Crime Control and Safe Streets Act as unconstitutional and will further erode the basic rights protected by the Fourth Amendment. Moreover, the Opinion conflicts with this Court's holdings in Gelbard and United States and with other Circuits' decisions.

Therefore, Petitioners respectfully submit that the petition for writ of certiorari should be granted.

Dated: 8/10/91

Respectfully submitted,

Irene S. Atraqchi

Irene S. Atraqchi, Pro se

Mike R. Atraqchi, Pro se

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 90-5503MN

Irene S. Atraqchi and Mike R. Atraqchi, Appellants, v. Unknown Named Agents of the Federal Bureau of Investigation, individually and as agents of the Federal Bureau of Investigation, Vern Klingman, Leonard Dahl, Mumtaz Fargo, Harold Hanser, Mike Schaefer, First United Methodist Church, Principal Financial Group, Fireman's Fund Insurance Company, Mountain Bell Telephone Company, Jane Doe, John Doe 1 thru 1000, Appellees.	*	Appeal From the United States District Court for the District of Minnesota (UNPUBLISHED)

Submitted: June 10, 1991

Filed: June 26, 1991

Before McMILLIAN, FAGG, and MAGILL, Circuit Judges.

PER CURIAM.

Irene S. Atraqchi and Mike R. Atraqchi appeal the district court's[1] order dismissing for failure to state a claim their section 1983 and Bivens-type action. Atraqchi v. Unknown Named Agents, No. Civ. 3-90-225 (D. Minn. Sept. 26, 1990). Upon review of the record, including the hearing transcript, we conclude the district court properly dismissed the complaint. See Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985) (although liberally construed, pro se complaint must contain specific facts supporting conclusions); Smith v. Bacon, 699 F.2d 434, 436-37 (8th Cir. 1983) (per curiam)

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[1]The Honorable Robert G. Renner, United States District Judge for the District of Minnesota.

(to allege conspiracy plaintiff must set forth that defendants had mutual understanding to act unconstitutionally and provide "some facts" suggesting meeting of minds).

Accordingly, we affirm the order of the district court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Irene S. Atraqchi and
Mike R. Atraqchi,

Plaintiffs,

v.

Unknown Named Agents of the Federal Bureau of Investigation, individually and as agents of the Federal Bureau of Investigation; Vern Klingman, individually and as ex-minister of the First United Methodist Church; Leonard Dahl, individually and as a manager of Principal Financial Group; Mumtaz Fargo, individually and as a member of the faculty of Eastern Montana College; Harold Hanser, individually and as the Yellowstone County Sheriff; First United Methodist Church; Principal Financial Group; Fireman's Fund Insurance Co.; Mountain Bell Telephone Co.; Jane Doe and John Doe (1 through 1000),

Defendants.

Civ. 3-90-225

ORDER and MEMORANDUM

This matter came before the Court on September 19, 1990, on the motion of the federal defendants "Unknown Named Agents of the Federal Bureau of Investigation" to dismiss for failure to state a claim upon which relief may be granted.

Robert M. Small, Assistant United States Attorney appeared on behalf of the federal defendants. Irene S. Atraqchi and Mike R. Atraqchi appeared pro se.

Based on the arguments of the parties, the file and entire record and the Court's bench ruling, IT IS HEREBY ORDERED that:

1. plaintiffs' motion to add as defendants Attorney General Richard Thornburgh and Federal Bureau of Investigation Director William

Sessions is denied;

2. federal defendants' motion to dismiss for failure to state a claim is granted;

3. this case is dismissed as against all defendants for failure to state a claim on which relief can be granted.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATE: September 26, 1990

ROBERT G. RENNER
United States
District Judge

MEMORANDUM

To supplement its bench ruling dismissing this entire case, the Court notes that it is fully aware that under notice pleading the requirements

on plaintiffs are minimal. Nonetheless, the Court finds that plaintiffs' allegations that defendants "deprived plaintiffs of their liberty without due process of law by illegally wiretapping and bugging (electronical surveillance) their home, telephones, and cars," Complaint, 1, are conclusory and completely lack a factual foundation, thus requiring dismissal of the case. At the hearing, the Court questioned plaintiffs thoroughly about any fact they might be able to proffer on which to base their conclusion that electronic surveillance had occurred. All plaintiffs set forth were occurrences in their lives that they asserted were the result of the alleged surveillance. The Court finds the inference that these occurrences would not

have happened but for electronic surveillance to be so irrational and improbable that the entire complaint should be dismissed as frivolous.